

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

NASHUA REDIMIX CONCRETE, INC.

Employer¹

and

CHAUFFEURS, TEAMSTERS AND HELPERS
LOCAL UNION 633, a/w INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner²

Case 1-RC-21653

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction here.

¹ The name of the Employer appears as corrected at the hearing.

² The name of the Petitioner appears as amended at the hearing.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer is a New Hampshire corporation engaged in the production and distribution of concrete to commercial and residential customers in southern New Hampshire and Massachusetts. The Petitioner seeks to represent a unit consisting of all full-time and regular part-time drivers, mechanics, batchers, and loaders/loader operators employed by the Employer at its Nashua, New Hampshire location, but excluding dispatchers, office clerical employees, managers, guards, and supervisors as defined in the Act. The Employer agrees that the classifications sought are appropriate in a unit, but the Employer maintains that the unit must include similarly classified employees of another company, Sea Coast Redimix Concrete (Sea Coast). There is no history of collective bargaining among the employees at issue.

I find that the Employer has failed to carry the evidentiary burden necessary to overcome the presumption in favor of the single facility unit. I will therefore direct an election in the petitioned-for unit limited to Nashua Redimix.

Facts

The Bissonnette family owns Nashua Redimix (Nashua). David Bissonnette is the company president.³ Bissonnette is located in Manchester, New Hampshire and visits the Nashua facility about three times a year for a review of the physical facility and to talk to the managers and employees.⁴ General Manager Peter Hebert is in charge of day-to-day operations at Nashua. The facility also has a dispatcher, Rick Lehoux, who the parties agree should be excluded from the bargaining unit. Currently, Nashua employs about 18 or 19 drivers, two mechanics, two loader/operators,⁵ and two batchers.⁶

³ David Bissonnette was the only witness who testified at the hearing.

⁴ The Bissonnette family also owns and operates two other companies, Manchester Redimix and Persons Concrete. Manchester Redimix is located in Manchester, New Hampshire, and this Petitioner represents some employees of that company. Persons Concrete has five locations in northern New Hampshire. No employees of Persons Concrete are represented. No party contends that employees of Manchester Redimix or Persons Concrete should be included in the unit here at issue.

All four companies owned by the family are independently incorporated. Bissonnette is the President of Manchester Redimix and a manager of Persons Concrete.

⁵ The loader operator position combines the functions of the loader and the operator. It is unclear if the position at Nashua is a loader position or a loader/operator position.

The family also operates a separate company, Sea Coast. David Bissonnette is a manager at Sea Coast. He is not located at that facility, but again visits the facility about three times a year. Harry Korslund and Dick Proulx are the managers at Sea Coast with responsibility for day-to-day operations.⁷ Sea Coast has locations in Dover, New Hampshire and Berwick, Maine.⁸ The Dover facility is about 60 miles from Nashua. Sea Coast employs about 18 or 19 drivers, two mechanics, one loader/operator, and two batchers.

Nashua and Sea Coast each is involved in the production and delivery of concrete. Loader/operators operate a front-end loader, which scoops up sand and stone and feeds it into the concrete plant. Bachers weigh the material and load it into the trucks. Drivers deliver the concrete to job sites. Similarly classified employees perform the same duties at both Nashua and Sea Coast.

Employer policies: David Bissonnette is generally responsible for establishing wage rates and personnel policies for both facilities. Nashua and Sea Coast have the same or similar policies regarding the use of bulletin boards, breaks, time clocks, vacations, holiday policy, drug and alcohol policy, vehicle inspection and repair, bereavement policy, and jury duty. The two companies have identical medical and dental policies and an identical profit sharing plan. A common employee handbook has been drafted but not implemented.

Hiring, training and wage rates: Each facility advertises for new positions in its respective local area. Jobs openings in Nashua are not posted at Sea Crest because the commuting distance from Dover to Nashua is too great. Hebert makes hiring decisions in Nashua and either Korslund or Proulx makes hiring decisions at Sea Coast. Each facility conducts separate but identical training of new employees. This training includes an employee mentor element, and it has never happened that a Nashua driver has helped to train a Sea Coast driver. The top pay rate for drivers in Nashua is \$15.35 an hour, while at Sea Coast it is \$15.00 an hour. Experienced mechanics in Nashua receive \$16.50 an hour and inexperienced

⁶ The Employer has two facilities that are collectively referred to as Nashua: 16 Commercial Street, Nashua, New Hampshire and 12 Columbia Drive, Amherst, New Hampshire. The parties agree that both locations are included in the petitioned-for unit.

⁷ The parties agree that David Bissonnette, Peter Hebert, Harry Korslund, and Dick Proulx is each a supervisor within the meaning of the Act, and should be excluded from any unit found appropriate. The parties also agree that Quality Control Manager Rick Lalumiere should be excluded from any unit found appropriate.

⁸ The record contains little evidence about the secondary Berwick facility, such as how employees of Sea Coast are divided between the Dover and Berwick facilities. It is not entirely clear from the record if the Employer is seeking to have Sea Coast employees at just Dover or at both locations included in the unit. Although it does not appear in the record, I take administrative notice that Berwick is about five miles further from Nashua than is Dover.

mechanics receive \$15.75 an hour; at Sea Coast, experienced mechanics receive about \$19.00 an hour and inexperienced mechanics receive \$15.00 an hour.

Discipline and grievances: The general manager at each facility has responsibility for discipline at his respective facility. Bissonnette is notified when an employee at either company is disciplined or terminated. In the case of discipline more severe than a one-day suspension, notification to Bissonnette may be before discipline is instituted as the general manager may seek advice. In other circumstances Bissonnette will be advised after discipline is implemented. Once or twice a year Bissonnette has overruled the general manager of a particular facility. Employees at each facility go to their respective general managers or dispatchers with any grievances over their working conditions.

Administrative functions: The bookkeeping, payroll function, and workers compensation function for both Sea Coast and Nashua are performed at Bissonnette's other companies.⁹ The Quality Control Manager in Nashua, Rich Lalumiere, is at Sea Coast once or twice a week. Personnel files of employees are kept at their respective locations.

Transfers and interchange of work: The only evidence of a permanent transfer between the two companies was one instance about two years ago. At that time a driver at Nashua inquired about an opening in Dover because he lived closer to Dover and wanted to reduce his commuting time. He was transferred to Dover, although the record is unclear who made that decision.¹⁰ That is the only request ever made by an employee to transfer from Nashua to Dover, and there is no evidence that any employee ever requested a transfer from Dover to Nashua.

In terms of temporary transfers, a driver from Nashua could go to Dover if there were an overload of work at Dover. Although the record is not completely clear, it appears that this assistance occurs an average of two to four times a month.¹¹ When this assignment occurs it is

⁹ The Nashua bookkeeping function is shared between one person at Manchester Redimix and one person at Persons Concrete at a facility located in Winnisquam, New Hampshire. The bookkeeping for Sea Coast is performed in Winnisquam. The payroll function for Nashua is performed in Manchester and the payroll function for Sea Coast is performed in Winnisquam. The workers compensation records for both companies are stored in Winnisquam.

¹⁰ It appears from the record that this employee was given a new date of hire when he began at Dover, but may have retained his accumulated benefits.

¹¹ The average offered at the hearing by David Bissonnette is based on his assessment of an "occurrence." An "occurrence" may be as little as one driver with one truck for less than a day, or as many as four drivers for five days. Bissonnette testified, however, that the most frequent "occurrence" would be one or two drivers for a day or less. All evidence of temporary transfers was imprecise estimate, based on Bissonnette's assessment and not from any records. Although he reviews some unidentified production paperwork, and as he visits the two companies infrequently, it is not clear from the record on what he bases these estimates.

usually for only part of a day, but on occasion it could be for the entire day.¹² Drivers go from Dover to Nashua even less frequently.

When the driver from Nashua is sent to Dover, the Nashua employee reports to Nashua, punches in, and then drives the vehicle to Dover. When the driver gets to Dover, he does not have to get out of the truck. Instead, the dispatcher in Dover would be aware that there was a Nashua truck en route, and when the driver got there, the truck would be loaded, the dispatcher would give the driver the delivery ticket, and the driver would go on his delivery. The driver would normally not have contact with anyone at Dover except the dispatcher and possibly the batcher. When the Nashua driver gets to the delivery point, he may have contact with Sea Coast drivers that are also at that customer. When the driver completes his delivery, he contacts the dispatcher at Dover and inquires if he is still needed at Dover or if he should return to Nashua. If a Nashua driver violates a company rule while doing a job for Sea Coast, the general manager in Nashua would be the one with authority to discipline the employee; that has not yet occurred, however.¹³

As of the hearing no mechanic, batcher, or loader has been interchanged between the companies. Two trucks from Nashua were once sent to Dover and used there for about 12 to 18 months by Dover employees because Dover was short on trucks.

Conclusion

The Board has long held that a single location unit is presumptively appropriate for collective bargaining. Cargill, Inc., 336 NLRB No. 118 (2001); J&L Plate, 310 NLRB 429 (1993); Bowie Hall Trucking, 290 NLRB 41 (1988). The presumption in favor of a single location unit can only be overcome “by a showing of functional integration so substantial as to negate the identity of the single facility.” Bowie Hall Trucking, supra at 42. The factors that the Board examines in making this determination are centralized control over daily operations and labor relations, skills and functions of employees, general working conditions, bargaining history, employee interchange, and geographic location of facilities in relation to each other.” Bowie Hall Trucking, supra, citing Sol’s, 272 NLRB 621 (1984); New Britain Transportation Co., 330 NLRB 397 (1999). The burden is on the party opposing the petitioned-for single facility unit to present evidence sufficient to overcome the presumption. J&L Plate, supra at 429. Further, as the Board noted in Penn Color, Inc., 249 NLRB 1117, 1119 (1980), the party seeking to overcome the presumptive appropriateness of a single-location unit must show that the day-to-day interests of the employees at the location sought by the other party have merged with those of the employees at the other locations at issue. In accordance with this rule, the

¹² Only two or three times a year has a driver from Nashua been assigned to Dover for more than a day.

¹³ Once or twice a year, drivers from Persons Concrete may be used by Sea Coast for part of a day. In that circumstance, the Persons Concrete driver is treated in the same manner as the Nashua driver who assists at Sea Coast.

Board in Penn Color assigned little weight to the fact that centralized higher management exercised significant control over the personnel policies and labor relations at all the locations in question, that a single truck driver made daily deliveries of goods and materials between those locations, and that personnel and payroll records were centralized for those locations. See also Neodata Product Distribution, 312 NLRB 987, 989, n.6 (1993), wherein the Board emphasized that common benefits and centralized direction of labor relations remain insufficient to rebut the finding of single facility appropriateness.

Here, I find that the Employer has failed to present evidence sufficient to overcome the presumption in favor of a single facility unit.¹⁴ The Employer's employees do share common personnel policies and procedures, and somewhat centralized administrative function. As indicated above, however, the Board has consistently held that centralized policies and administration is not determinative in deciding whether employees employed at different facilities share a community of interest; rather, what is most relevant is whether the employees in the petitioned-for single facility "perform their day-to-day work under the immediate supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and problems." Renzetti's Market, Inc., 238 NLRB 174 (1978). Here, the local autonomy at Nashua is great. The general manager and dispatcher at Nashua assign work, hire, train, discipline, schedule, and handle grievances for Nashua employees. This strongly militates against the merger of identity with the Sea Coast employees. Cargill, Inc., supra; D & L Transportation, 324 NLRB 160, 161 (1997).

With respect to the factor of employee interchange, I first note that there is no evidence of interchange of any kind among classifications of the two companies except in the driver classification. As to the drivers, the evidence of temporary interchange presented by the Employer consisted of imprecise estimates and guesswork, and is not sufficiently reliable or detailed to conclude that the Employer has carried its burden.¹⁵

¹⁴ In making this determination, I note that the Employer implicitly seeks a determination that Nashua and Sea Coast constitute a single employer. Insufficient evidence was presented at the hearing to make this determination, however. Nonetheless, I will assume, without finding, that the two companies constitute a single employer for purposes of my analysis. It should be noted that the fact that two companies may constitute a single employer does not require the inclusion of their employees in a single unit. Lawson Mardon U.S.A., 332 NLRB 1282 (2000).

¹⁵ See footnote 11 supra. In this regard, see Cargill, supra, where the Board noted that the employer there had failed to carry its burden of demonstrating interchange where it failed to introduce any documentary evidence to support its claims and offered only generalized testimony surrounding the context of the alleged instances of interchange. See also New Britain Transportation Co., 330 NLRB at 398, where the Board found that the employer there had failed to carry its burden because, in part, it did not present evidence of the percentage of the total number of routes involving temporary interchange or the percentage of the total number and percentage of employees affected by temporary interchange. Similarly, in this case, the Employer presented no evidence of the total amount of work performed by Nashua, the total number of employees involved in interchange, or any other data providing context to determine the true import of the evidence.

Even taking the Employer's vague estimates at face value, however, I would find that this amount of temporary interchange is too insignificant to negate the separate identity of the petitioned-for unit and does not approach the amount of interchange necessary to carry the Employer's burden. 24 to 48 instances of interchange a year, most for less than a day, are quite few; this is so even if some involved more than one employee. Furthermore, this amount of interchange would appear to be a tiny proportion of the total work performed by the Employer or by the affected employees. Cargill, Inc., supra (13-14 instances of interchange among 23 employees over an eight month period is insufficient to overcome the presumption); New Britain Transportation Co., supra at 398 (190 instances of temporary interchange, of which 72 were not voluntary, out of a workforce of 179, in six months, is insufficient to overcome the presumption); compare Dayton Transport Corp., 270 NLRB 1114 (1985) (presumption overcome where drivers from one terminal dropped loads at the next terminal to be picked up by drivers there, and would thereafter be dispatched on another run from the intermediate terminal, with 400-425 such instances occurring in a single year).

Although the Nashua employees may report to the dispatcher at Sea Coast when performing tasks for Sea Coast, they still clock in at Nashua and are supervised by the general manager from Nashua for discipline. Their contact with unit classifications when they are at the Sea Coast facility is quite limited, and may otherwise consist of limited or social contact with Sea Coast drivers at the point of delivery. Finally on the subject of interchange, evidence presented by the Employer of one permanent transfer is far from significant; in any case, this transfer is not entitled to much weight in assessing this issue as the transfer was made at the request of, and for the convenience of, the employee. Renzetti's Market, Inc., supra at 175 fn. 8; Red Lobster, 300 NLRB 908, 911 (1990).

The distance between the two companies is great, and also supports a finding that a single location unit is appropriate. New Britain Transportation Co., supra at 398 (six to twelve mile separation between plants is significant); Red Lobster, supra (13 restaurants not physically proximate where the average distance between them is seven miles and 11 are located within a radius of approximately 22 miles); Carter Hawley Hale Stores, 273 NLRB 621 (1984)(significant distances among stores supports finding of single-store units where the average distance between petitioned for locations and other locations is 35-40 miles).

The cases cited by the Employer do not suggest that a contrary result is in order here. For instance, in Budget Rent A Car Systems, 337 NLRB No. 147 (2002), the Board emphasized lack of local autonomy and functional integration. There, the petitioned-for locations had no separate management at all, as each of the five local market stores shared a

In addition, no adequate foundation was provided by the Employer for David Bissonnette's estimates. Although he may review some paperwork at his office, it is unclear how this translates into a reliable estimate, especially in view of his infrequent trips to the facilities.

branch manager with another facility. Moreover, the branch managers did not have authority to make any serious personnel decisions, including hiring; even the scheduling of routine overtime was subject to approval by a district manager. There was a high level of functional integration in this car rental company, in that there was no separate fleet inventory and substantial and constant contact between employees from all stores was necessary. In addition, mechanics at one facility serviced all local market vehicles. There is nothing even close to this level of functional integration in the instant case, as the managers at Nashua have a wide range of autonomy and control over day-to-day operations.

Similarly, in R & D Trucking, 327 NLRB 531 (1999), the Board again focused on the lack of local autonomy. In that case, employees at the two locations were supervised by the company president to the point of assigning work, and the employer did not even have a local manager at one facility. In addition, the interchange in R & D Trucking was much greater than the interchange here. In that case, there was evidence of occurrence of temporary transfers at the rate of about a dozen a month out of a combined work force of ten. Here, the evidence consists of transfers at about one-third to one-half that amount, out of a work force of about five times as many employees. In addition, the facilities there were about five miles apart.

Again, in Napa Columbus Parts Co., 269 NLRB 1052 (1984), functional integration and lack of local autonomy were key factors. In that case, all local stores were functionally linked to a common distribution center for daily operations. Importantly, local management there had no authority to deal with any labor relations matters, and could not even accept employment applications. In the instant case, local managers hire, issue discipline, and handle grievances. Unlike the instant case, temporary transfers were frequent in Napa Columbus, and contact among employees of the different facilities there at issue occurred on a daily basis at the distribution center.

Although the Employer's employees at the various locations are similarly skilled, the unit petitioned for is presumptively appropriate. This presumptively appropriate unit assures employees the fullest freedom in exercising the rights guaranteed under the Act. Manor Healthcare Corp., 285 NLRB 224, 225 (1987). Accordingly, and noting the absence of any bargaining history among the employees in question, the lack of any significant employee interchange, and the fact that no labor organization seeks to represent the employees on a broader basis,¹⁶ I find that the evidence presented does not establish that the petitioned-for unit has been so "effectively merged into a more comprehensive unit, or is so functionally integrated that it has lost its separate identity." Esco Corp., 298 NLRB 837, 839 (1990). Accordingly, I find that the Petitioner's requested single facility unit is an appropriate unit.

¹⁶ Bowie Hall Trucking, 290 NLRB at 43; Welch Co., 146 NLRB 713, 715 (1964).

Accordingly, based upon the foregoing and the record as a whole, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, mechanics, batchers, and loaders/loader operators employed by the Employer at its Nashua, New Hampshire location, but excluding dispatchers, office clerical employees, managers, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Chauffeurs, Teamsters, and Helpers Local Union 633, a/w International Brotherhood of Teamsters, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before July 25, 2003. No extension of time to file this list may be granted except in

extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by August 1, 2003.

/s/ Rosemary Pye

Rosemary Pye, Regional Director

First Region

National Labor Relations Board

Thomas P. O'Neill, Jr. Federal Building

10 Causeway Street - Room 601

Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 18th day of July, 2003.

440-1720-0133

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